

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: George L. Cremer; Leo J. Cremer Jr.

OBJECTOR: State of Montana Board of Land Commissioners

ON MOTION OF THE MONTANA WATER COURT

CASE 40A-0590-R-2022

40A 179829-00

40A 179830-00

40A 179831-00

40A 179867-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above captioned claims appeared in the Preliminary Decree for the Musselshell River above Roundup (Basin 40A) issued on June 7, 2017. The claims are owned by George L Cremer and Leo J Cremer, Jr.¹ The State of Montana objected to all of the claims in this matter. The claims also received issue remarks and were called in on motion of the Water Court.

FINDINGS OF FACT

1. The State objected to each claim based on *Pettibone* and the claims received the following issue remark:

THIS CLAIM WILL BE CALLED IN DURING THE NEXT DECREE IN THIS BASIN TO COMPLY WITH THE ORDER GRANTING MOTION TO CONFORM DATED MARCH 2, 1987.

2. The Cremers withdrew their interest in claims 40A 179829-00, 40A 179830-00, 40A 179831-00, and 40A 179867-00. (Doc.² 11.00).

3. The State moved to be added as the owner to each claim. (Doc. 12.00).

40A 179829-00

4. Claim 40A 179829-00 is a stock claim for a spring in the SENE of Section 16, T4N, R17E, Sweet Grass County.

5. The State acquired the SENE of Section 16 on November 8, 1889 pursuant to the granting document (Patent Book vol. 2, pg. 301). The Government Land Office survey was accepted on December 1, 1877.

6. The priority date of claim 40A 179829-00 is January 25, 1964.

7. There is no evidence in the claim or case files showing that Claimant compensated the State for the ownership of the claim.

40A 179830-00

8. Claim 40A 179830-00 is a stock claim for a spring in the NESE of Section 16, T4N, R17E, Sweet Grass County.

¹ Some filings reference MC Land and Cattle Inc. as the current owner of the claims in this matter. No ownership updates have been processed, and no ownership updates are pending in the DNRC's database.

² "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

9. The State acquired the NESE of Section 16 on November 8, 1889 pursuant to the granting document (Patent Book vol. 2, pg. 301). The Government Land Office survey was accepted on December 1, 1877.

10. The priority date of claim 40A 179830-00 is January 25, 1964.

11. There is no evidence in the claim or case files showing that Claimant compensated the State for the ownership of the claim.

40A 179831-00

12. Claim 40A 179831-00 is a stock claim for a spring in the NENE of Section 16, T4N, R17E, Sweet Grass County.

13. The State acquired the NENE of Section 16 on November 8, 1889 pursuant to the granting document (Patent Book vol. 2, pg. 301). The Government Land Office survey was accepted on December 1, 1877.

14. The priority date of claim 40A 179831-00 is January 25, 1964.

15. There is no evidence in the claim or case files showing that Claimant compensated the State for the ownership of the claim.

40A 179867-00

16. Claim 40A 179867-00 is a stock claim for a spring in the SWSESW of Section 8, T4N, R17E, Sweet Grass County.

17. The State acquired the SWSESW of Section 8 on June 5, 1908 pursuant to the granting document (Clear List vol. 4, pg. 921). The Government Land Office survey was accepted on December 1, 1877.

18. The priority date of claim 40A 179867-00 is January 25, 1964.

19. There is no evidence in the claim or case files showing that Claimant compensated the State for the ownership of the claim.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

9. A lessee who makes an appropriation of water on school trust land does so on behalf of the State. *Dep’t of State Lands v. Pettibone*, 216 Mont. 361, 368, 702 P.2d 948, 952 (1985).

10. The title to a water right appropriated on school trust land vests in the State. *Pettibone*, 216 Mont. at 376, 702 P.2d at 957.

11. Although certain land sections were given to the State by the federal government for school trust purposes in the Enabling Act, title could not vest until after the land was surveyed, the plat was approved by the proper federal authorities, and the State was admitted to the Union. (See *Clemmons v. Gillette*, 33 Mont. 321, 83 P. 879

(1905); *Powell County v. 5 Rockin' MS Angus Ranch, Inc.*, 324 Mont. 204, 102 P.3d 1210(2004)).

If, at the time of the appropriation, title was not vested in the State, the claim is properly owned by the private appropriator. A water right claim on State land may also be properly owned by a private appropriator if that private appropriator has compensated the State for the ownership of the water right claim.

CONCLUSIONS OF LAW

40A 179829-00

1. The State established by a preponderance of the evidence that the point of diversion and place of use for claim 40A 179829-00 vested in the State before the claimed priority date. The State should be added as the owner of claim 40A 179829-00.

40A 179830-00

2. The State established by a preponderance of the evidence that the point of diversion and place of use for claim 40A 179830-00 vested in the State before the claimed priority date. The State should be added as the owner of claim 40A 179830-00.

40A 179831-00

3. The State established by a preponderance of the evidence that the point of diversion and place of use for claim 40A 179831-00 vested in the State before the claimed priority date. The State should be added as the owner of claim 40A 179831-00.

40A 179867-00

4. The State established by a preponderance of the evidence that the point of diversion and place of use for claim 40A 179867-00 vested in the State before the claimed priority date. The State should be added as the owner of claim 40A 179867-00.

RECOMMENDATIONS

1. The Cremers should be removed as owners from claims 40A 179829-00, 40A 179830-00, 40A 179831-00, and 40A 179867-00.

2. The State should be added as the sole owner of claims 40A 179829-00, 40A 179830-00, 40A 179831-00, and 40A 179867-00.

3. The issue remarks should be removed from each claim.

A post decree abstract of each water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Last Order:

George L. Cremer
PO Box 276
Melville, MT 59055

Last Order:

Leo J. Cremer Jr.
241 S. Frontage Road
Big Timber, MT 59011

Service Via Electronic Mail:

Terisa Oomens

~~Kirsten Madsen~~

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Notice: Service List Updated 7.27.23

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 179829-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JANUARY 25, 1964

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF SIMMONS CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENE	16	4N	17E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SENE	16	4N	17E	SWEET GRASS

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 179830-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JANUARY 25, 1964

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF SIMMONS CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESE	16	4N	17E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESE	16	4N	17E	SWEET GRASS

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 179831-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JANUARY 25, 1964

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF SIMMONS CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENE	16	4N	17E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENE	16	4N	17E	SWEET GRASS

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 179867-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

Priority Date: JANUARY 25, 1964

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF SIMMONS CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESW	8	4N	17E	SWEET GRASS

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSESW	8	4N	17E	SWEET GRASS